SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961-2

No. 980

WILLIAM A. PORTER,
Petitioner,

vs.

HONORABLE R. C. STANFORD, JR.,
Judge of the Superior Court,
Maricopa County, State of
Arizona,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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No.

WILLIAM A. PORTER,

Petitioner,

vs.

HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Arizona entered in the above-entitled case on February 20, 1962.

OPINIONS BELOW

The decree herein at issue, in Cause No. 7541, in the Supreme Court of Arizona, issued without opinion as a disposition of Petitioner's claims in Cause No. 55179 in the trial court in which Petitioner was named Defendant. Certain issues therein were litigated in the Arizona Supreme Court in 1959 between the Plaintiff

of Cause No. 55179 and various intervenors in said cause, and such proceedings are entitled *Porter v. Stanford* and *Kemble v. Stanford*, and are reported at 347 P. 2d 35, 86 Ariz. 402, and 347 P. 2d 29, 86 Ariz. 892, respectively.

No other opinions have been reported.

JURISDICTION

The denial of Petitioner's application for a Writ of Certiorari was entered, after an informal hearing on the merits, on February 20, 1962, by the Supreme Court of Arizona. No petition for rehearing was filed.

The jurisdiction of this court is invoked under 28 U. S. C. § 1257 (c):

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held by authority exercised under, the United States.

QUESTIONS PRESENTED

1. Are foreign land decrees, issued by virtue of in personam jurisdiction of courts of equity, to be accorded full faith and credit at the situs of the land by being deemed conclusive and enforceable, or is full faith and credit to be recognized only as a passive and involuntary concomitant of the respect afforded deeds executed pursuant to foreign decrees?

2. May the Arizona court grant a res judicata effect to that portion of an Idaho decree which awards money, and enforce an action based thereon, while concurrently refusing to give a res judicata effect to the litigated issue of its own jurisdiction determined by that decree?

   Assuming, successive proceedings in Arizona and Idaho, both affecting the same parties and the same Arizona land, and assuming that Arizona is then required to give full faith and credit to the Idaho decree in further proceedings between the parties, thereby recognizing the litigated issue of jurisdiction as res judicata:

3. What is the effect of the Idaho decree as to its determination of ownership of the Arizona land and its order to the defendant to convey that land?

4. Do valid deeds executed pursuant to the Idaho decree alter the answer to Question 3?

5. Does the fact that the land in Arizona was *custodia legis* throughout all litigation alter the answers to Questions 3 and 4?

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE IV:

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

AMENDMENT XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

**The asterisk, as used herein, indicates that a copy of the instrument, order, decree, etc. referred to is indexed and reprinted in the Appendix which supplements this Petition. A cross-index in the front of the Appendix indicates pages in the Petition on which reference to the instrument appeared. All of the material comprising the Appendix is either a decree of the Arizona Supreme Court, or is material formally pleaded and incorporated into petitions acted on by that court.*

The extended litigation antecedent to this proceeding began in February of 1959, at which time Gladys E. Porter (hereafter referred to as Mrs. Porter), having left her domiciliary State of Idaho two months earlier, filed a separate maintenance action in Arizona against William Arnold Porter, Petitioner herein. Petitioner resided in Idaho and was not personally served in such action, and did not appear in any proceedings thereafter. As an incident of this action, a hotel property[1] in Phoenix, Arizona was attached by order of the Court, whereupon Pearline Porter and Pauline P. Leonard (hereafter referred to as Intervenors) filed a Complaint in Intervention, in February, 1959, alleging that a partnership, of which they were members, owned the hotel property, to which complaint Mrs. Porter, defendant in intervention, filed an Answer. In May, 1959, a decree of separate maintenance* was entered for Mrs. Porter, in default of Petitioner, after a hearing of

[1] This real estate, The Arizona Hotel, located in Phoenix, Arizona, is the only property at issue throughout all proceedings below, and will be referred to simply as "the hotel" or "the hotel property."

which the Intervenors had neither notice nor knowledge, and Mrs. Porter was granted judgment for support moneys in the amount of three thousand dollars ($3,000.00) a month. The Intervenors thereafter sought a writ of prohibition in the Arizona Supreme Court, attempting to halt execution of the judgment insofar as it affected the hotel property until there had been a determination of the ownership of the hotel.

At the same time a third plaintiff in intervention, George C. Kemble, sought an alternative writ of prohibition in the Arizona Supreme Court. His claim of right was based on a creditors' lien against the hotel property, which lien had been acquired incident to a judgment in his favor, against Petitioner, issued by the Superior Court of Cochise County, Arizona, on May 25, 1959. This intervenor's petition charged that his lien was prior to any lien in favor of Mrs. Porter, and he sought to prohibit the enforcement of the support order by the Superior Court of Maricopa County.

In quashing the writ of the Third Intervenor, the Court held* that the controlling issue of whether the Arizona Hotel was community property of the Porters, or partnership property susceptible to his lien, must be determined by the Superior Court of Maricopa County, in which court the question was already at issue.

The alternative writ of the original Intervenors was quashed in the Arizona Supreme Court on the same day by an opinion* in which the Supreme Court recited jurisdiction of the parties, and, without deciding whether the property was owned by a partnership, determined that the community of Mr. and Mrs. Porter did possess an interest in said hotel property and that the lower court had the authority to order the support moneys for Mrs. Porter and children, and to execute judgment by sale of the hotel. A sharp dissent by Justice Johnson, who also dissented to the opinion in the third Intervenor's case, questioned, among other things, the jurisdiction of the court over Defendant-Petitioner and noted that there had been no service on Petitioner herein, either personal or constructive, as to a hearing in the trial court in which Mrs. Porter had

been granted a modification order which altered the support award.

On April 7, 1960, a Sheriff's deed for the hotel property issued to Mrs. Porter, but the receivership in which the hotel was placed by the court order of April, 1959, has obtained at all times since then, up to and including the present time.

Meanwhile, in May of 1959, in the domiciliary State of Idaho, William A. Porter, Petitioner, filed a complaint* for divorce against Mrs. Porter, in which action Mrs. Porter was served, appeared personally and by her attorneys, and filed an answer and cross-complaint*, and in which action the original Intervenors, Porter and Leonard, also filed a complaint* seeking to establish their claims in the Arizona Hotel property.

Mrs. Porter pleaded the Arizona separate maintenance support-judgment in bar in the Idaho court, insofar as distribution of the hotel property was concerned, and there was then litigated the issue of the validity of the Arizona court's jurisdiction in that action, wherein the Idaho court determined* that the Arizona court did not have jurisdiction of William A. Porter, Petitioner, for want of service or valid process, and that the Arizona judgment was, therefore, denied full faith and credit by the Idaho court and held to be null and void.

The Idaho court also litigated and took evidence on the issues raised by the Intervenors and Petitioner herein, and determined* that the Arizona Hotel property was the property of a bona fide co-partnership of which the two Intervenors and the community of Mr. and Mrs. Porter were partners.

It will be noted in the Appendix that the Idaho divorce court issued an order* dated December 16, 1959, which directed various acts respecting property of the Porters, by the parties to the divorce, and that such order directly enjoined Mrs. Porter from taking any action or actions during pendency of the divorce suit which would in any way interfere with the management and/or control of the Arizona Hotel property. This order issued when

both Mrs. Porter and her attorneys, the Messrs. Wilson, of Arizona, were personally appearing before the Idaho court.

Some twelve months later, after the divorce decree was granted Mrs. Porter, it was discovered that Mrs. Porter and her attorneys, the Messrs. Wilson, had disregarded this order and had conspired to defeat any possible judgment of the divorce court by the surreptitious execution of any instrument* purporting to convey an undivided one-half of Mrs. Porter's interest in the Arizona Hotel property to grantees Richard A. Wilson and W. Francis Wilson, her attorneys, which instrument was recorded on May 5, 1960, in Kootenai County, Idaho, the very county over which the divorce court presided. Neither the court nor other parties in the pending divorce suit were apprised of this action between Mrs. Porter and her attorneys prior to issuance of the final decree.[2]

In December, 1960, the Idaho court granted a divorce decree* to Mrs. Porter, by virtue of her cross-complaint, distributed all community property, and ordered deeds of conveyance of various properties executed by both Mrs. Porter and Petitioner, Mr. Porter. These orders included directions to Mrs. Porter to execute deeds of her interests in the Arizona Hotel property to Petitioner and to Intervenors, and directions to Petitioner to execute a deed of part of his interest in the hotel property to the Intervenors, the final result being that Intervenors each received deeds entitling them to their one-sixth (1/6) of the partnership interest and Petitioner received deeds entitling him to his two-thirds (2/3) of the partnership interest. These deeds* were all executed in compliance with the Idaho court judgment, as were various other deeds by which Petitioner, himself, conveyed other real and personal property to Mrs. Porter, and the court's decree enjoined Mrs. Porter and Intervenors from all further proceedings in the Arizona court

[2]The effect of this instrument, or any possible claim of right thereunder, has not been litigated as an issue in the proceedings below, although the fact of the conveyance and the deed, itself, have been set forth before both the trial court and Supreme Court of Arizona, and the divorce court of Idaho took cognizance of the same facts in a proceeding instituted by Mrs. Porter against Petitioner, subsequent to the divorce action.*

by which the Arizona Hotel property could be affected in any manner inconsistent with the Idaho judgment, and ordered Mrs. Porter to dismiss same and thereby to effectuate removal of the receivership in Arizona. In compliance with the order of the Idaho court, Mrs. Porter also executed a Release of Judgment* concerning all claims predicated on the Arizona separate maintenance action, which was delivered to the Maricopa County Superior Court of Arizona, the court of the original proceedings in separate maintenance. Immediately after the Idaho judgment issued, Mrs. Porter filed notice of appeal*, citing as error the court's jurisdiction to order the disposition of the Arizona Hotel property and the injunction as to further actions in Arizona affecting it.

This appeal now pends in the Supreme Court of Idaho. It is anticipated that the appellate decision will issue prior to this court's consideration of the instant petition.

Notwithstanding the injunction of the Idaho court and her appeal in the Idaho Supreme Court, Mrs. Porter has prosecuted the following suits against Petitioner and or Intervenors:

(1) In the proceedings auxiliary to the original separate maintenance action in Arizona, where matters pended between Mrs. Porter and Intervenors in Respondent Judge Stanford's court, the Intervenors filed a Supplementary Complaint* and the duly authenticated judgment from Idaho, seeking to establish their rights in the hotel property. Mrs. Porter, by her answer* of May, 1961, acknowledged the in personam jurisdiction of the Idaho divorce court and the validity of the decree of divorce *except* as to the jurisdiction of the Idaho court to dispose of the hotel property and to order execution of the deeds, which orders she alleged to be void for want of jurisdiction, and *except* as to the litigated issue of Arizona jurisdiction in the separate maintenance proceeding. In this same answer, Mrs. Porter set forth a counterclaim* seeking to establish the Idaho decree, attached a proper copy of the decree to her answer, and prayed the court to grant her all the sums of alimony and support money owed her by Petitioner as the result of the terms of that decree, plus costs and various attorneys' fees, and

to secure such sums by placing charging order on Petitioner's interest in the "Continental Hotels System, a co-partnership," and to appoint a receiver to take charge of said property. This property was, of course, the same hotel property originally at issue, which was still in receivership as a result of the original order of 1959 by Judge Stanford, and was then the main issue of the Intervenor's Complaint.

(2) While these matters pended, Mrs. Porter returned to Idaho and re-opened the proceedings in divorce by securing an order of the trial court directing Petitioner to show cause why he had not paid to Mrs. Porter the support moneys granted her by the divorce decree, and why he should not be cited for contempt. Petitioner appeared and offered evidence in support of his defense and the opinion* of the trial court, issued in September, 1961, refused to hold Petitioner in contempt and specifically found that Mrs. Porter's continued prosecutions in Arizona were the reason for Petitioner's failure to pay, for the reason that his chief source of revenue was normally from the Arizona Hotel property, then in receivership. The court pointed out Mrs. Porter's refusal to obey the injunctions, by citing the secret conveyance to her attorneys and her continued efforts to litigate matters already decided, and renewed admonishments to Mrs. Porter to heed the orders of the court.

(3) Thereupon, Mrs. Porter immediately returned to Arizona, filed another suit* in the Maricopa Superior Court (Cause No. 132632) against Petitioner in November, 1961, in which she again invoked the Idaho divorce judgment, as well as the Arizona separate maintenance decree, and sought to establish both support awards as the basis of a claim for a money judgment in the total amount of approximately Sixty-eight Thousand Dollars ($68,000.00).

As incident to this suit, Petitioner was jailed by direction of a ne exeat writ* secured by Mrs. Porter, and released only on cognizance of a bond in the amount of Ten Thousand Dollars ($10,000.00). This action still pends.

In the meantime, litigation in Cause No. 55179 continued between Mrs. Porter and Intervenors. Despite the pleading of the Idaho judgment by both Mrs. Porter and Intervenors, Judge Stanford refused to admit such judgment into evidence on trial of the case, and refused to grant any effect to the deeds and release of judgment executed by Mrs. Porter, which instruments were properly offered into evidence by the Intervenors.

Prior to the judgment of the trial court, the Intervenors, in January of 1962, applied for an alternate writ of prohibition from the Arizona Supreme Court, pleading the fact of the Idaho judgment and its res judicata effect as to *all* its terms, rather than isolated terms, and requesting that the lower court be restrained from further action affecting the hotel property at issue. Duly authenticated copies of the Idaho judgment and the deeds were incorporated in the Petition*. After a hearing and oral argument on the matters pleaded, the Arizona Supreme Court's judgment* was entered on January 30, 1962, which stated: "The Court, being fully advised in the premises, ordered that the Petition for an Alternative Writ of Prohibition be denied."

In the meantime, the trial court directed the jury to return a verdict for Mrs. Porter and the judgment* against the Intervenors issued January 24, 1962, by which judgment the benefits to Mrs. Porter of the Idaho decree were established, and the deeds and benefits to the Intervenors by virtue of the same decree, were implicitly denied. The effect of the judgment is to grant to Mrs. Porter the entire Arizona Hotel property, in direct derogation of both Petitioner's and Intervenors' rights as awarded by the divorce judgment of the domiciliary State of Idaho.

On February 8th, Petitioner herein, who had yet to be served in the Arizona action, and who had never appeared therein, sought a writ of certiorari in the Arizona Supreme Court to review the judgment of the trial court, such remedy being the only one available to Petitioner under Arizona procedural law. In this application*, Petitioner's sole grounds for relief were based on the

formally pleaded and cited clauses of the U. S. Constitution set forth above, i.e. Article IV, Sections 1 and 2, and Amendment XIV, Section 1, respecting full faith and credit, equal protection, and due process. Incorporated into the Petition were both the Idaho judgment and the deeds of conveyance by Mrs. Porter, as well as all other instruments reprinted in the Appendix. At an informal hearing of February 20, 1962, oral arguments on the merits were presented by the Messrs. Wilson, attorneys for Mrs. Porter, and counsel for Petitioner. The Arizona Supreme Court then entered a decree* almost identical to that one quashing the Intervenors' application for a writ, the court stating that it was fully advised in the premises and ordering that the Petition for the writ of certiorari be denied.

It is from this judgment Petitioner seeks review in this court, the Arizona Supreme Court having granted Petitioner a stay of execution of the trial court judgment below for the purpose of allowing Petitioner to file this Petition.

REASONS FOR GRANTING THE WRIT

I.

The Protection Of Full Faith And Credit Has Been Weakened For Fifty Years By The Effects Of Fall v. Eastin And A Reappraisal Of Recognition To Foreign Land Decrees Is Overdue And Necessary.

In 1909 this court's predecessors determined the well-known cause of *Fall v. Eastin*[1], in an opinion which has ever since represented the definitive negation of the premise of full faith and credit to foreign land decrees. The decision has not been condusive to serene coexistence among the state courts, it has diluted the dynamic strength of res judicata principles, and it has effected a vulnerable and precarious thinness in the protective power implicit in the superb concept of full faith and credit.

[1] 215 U.S. 1 (1909).

Now, in 1962, our state courts have struggled for over half a century with the effects of that decision, either in futile attempts to reconcile logic and equity with results dictated by the *Fall* case, or by conscientious efforts to escape its effects through distinctions more chimerical than tenable. The prevailing situation is one of confusion and distress, and it is counsel's belief, submitted with all possible deference, that the inequities and inconsistencies of the state court decisions, in cases which involve a fundamental problem of constitutional law, are prodigal evidence of the critical need for this court's re-evaluation of the issue of full faith and credit to foreign land decrees.

When the orderly operative force of a precept as transcendent as that of the full faith and credit clause is held to be subject to a conspicuous exception, clearly there must be strong justification for the divergent rule; and when the exception not only discountenances the broadening protection of the Constitution, but creates an irreconciliable obstacle to the natural growth of the invaluable res judicata principle, the reasons for divergence must be doubly cogent and compelling. The problem before this court would be, then, to ascertain the value and validity of any reasons which purport to underly the rule by which full faith and credit is denied to foreign decrees pertaining to land at the situs, and by which the force of res judicata becomes suddenly impotent.

In *Fall v. Eastin*, in which a Washington decree ordering a conveyance was held to be undemanding of conclusive effect as to third parties at the situs of Nebraska, the majority opinion of Mr. Justice McKenna reflected his obvious uneasiness with the final determination, and he set forth persuasive argument against it, saying that an opposite results might be "plausibly sustained"[2]; unfortunately, Justice McKenna concluded that *authority* dictated the actual result of the *Fall* case, a conclusion that is nerve-wracking to contemplate because it is an unhappy and badly confused error.

[2] 215 U.S. 1, 11 (1909).

In reaching this peculiar deduction, Justice McKenna failed to exercise worthy discrimination in his selection of supporting authority. The cases he relied on were patently distinguishable, and not one was inconsistent with the premise that claims to land under a foreign decree should be enforceable, as between the parties, through an action brought at the situs. He cited other cases that validly sustained the logic of that premise, but failed to use them appropriately.[1] In leaning primarily on the case of *Watts v. Waddle*,[2] and inferring from it that no action at the situs is possible to enforce claims to land under a foreign decree, Justice McKenna erred profoundly, and in so doing relied on *Watts v. Waddle* to establish a proposition that was in direct and specific contradiction to the reason controlling the *Watts* case. There, the court held the plaintiff's title to certain lands was invalid *because* he had failed to invoke equity in Ohio to secure enforcement of a Kentucky decree awarding him the land. Instead, he had brought a suit for specific performance against a potential vendee of the land who refused to consummate the contract until title and patent were clear, without first acquiring clear title by establishing his right to it through enforcement of the Kentucky decree in Ohio, in an independent action against the defendant of the Kentucky suit.

Yet that holding was interpreted by Justice McKenna to indicate enforcement of the foreign land decree was not legally tenable, and that faulty conclusion has created a miasma of ambiguity and unreasoning theory which has haunted case law for over fifty years.

Obviously, faulty inception does not negate a rule's value if there are strong additional reasons, independent of precedent, for abiding by it. There are, seemingly, two other reasons most frequently raised in support of the rule which denies enforcement of

[1] Watts v. Waddle, 6 Pet. (U.S.) 389 (1832); Watkins v. Holman, 16 Pet. (U.S.) 25 (1842); Corbett v. Nutt, 10 Wall. (U.S.) 464 (1870); Hart v. Sansom, 110 U.S. 151 (1884); Carpenter v. Strange, 141 U.S. 87 (1891).

[2] Burnley v. Stevenson, 24 Ohio St. 474, 16 Am. Rep. 621 (1873); Dull v. Blackman, 169 U.S. 243 (1898); Laumeroy v. Lum, 210 U.S. 230 (1908); 6 Pet. (U.S.) 389 (1832).

foreign land decrees: One is the ghostly shade that equity acts only in personam; the second is the old chauvinistic theory that such a rule is necessary to perpetuate overriding policy factors that may obtain in the situs state.

It is firmly submitted by counsel that neither of these reasons can safely endure any examination on the merits, and that considered by any criterion of contemporary jurisprudence and the increasingly progressive interaction within our federal system, such theories lack even superficial impressiveness.

Domestic equity decrees have long been granted a res judicata effect; courts uninhibitedly order the conveyances of foreign land by defendants before them, in the somewhat optimistic belief their orders will be honored without reserve; and equity decrees for money are the basis of actions at law in sister states, by virtue of full faith and credit, in cases where alimony is ordered. It is possible, indeed, to speculate that no radical of legal powers has been expanded and extended as quickly, in recent decades, as has the power of equity, and to deny its unusual abilities is to embrace legal reaction with a blind vengeance.

As to the matter of a state's sovereign policy being violated by the act of allowing a plaintiff to bring an action to enforce a foreign land decree, such a contention must perforce dissolve before the obvious and inescapable fact that all the states recognize and respect deeds, themselves, executed pursuant to an equitable decree, as creating an obligation to convey, and the states have not experienced any detectable damage to what appears to be rather vague notions of "sovereign policy" toward domestic land. Declaring that policy is damaged by the predicate of the executed deed, but not by the deed and its obligatory effect, is a queerness that might have appealed to Lewis Carroll, but which has primarily served to disconcert careful judges faced with rationalizing the idea.

Professor Brainerd Currie, of the University of Chicago Law School, has incisively commented: " . . . the Constitution does not

say that full faith and credit shall be given to conveyances; but the only way to discredit the deed is to plead duress and when the compulsion is identified as that of the decree of a court of competent jurisdiction, having power over the defendant, the plea can be sustained only if credit is refused to the decree. In this context the terms 'in rem' and 'in personam' have been bandied about with discouraging results, but it can hardly be maintained that the decree in this instance (when it does no more than address a command to the defendant, which the defendant obeys) operates otherwise than in personam. It follows that full faith and credit requires recognition of the validity of the deed, and that there is no way of escape from the dilemma except by recognizing the decree where there is no deed."[4]

As a final comment on this particular reason for denial of full faith and credit to foreign land decrees, counsel would submit that whatever virtue may attach domestically to the value of a state's internal policy, that policy cannot but be subordinated to the federal expedient of full faith and credit when that surpassing concept is, of itself, dedicated to the enhancement of domestic policy of the individual state, through the command that judicially translated policy be respected and obeyed in all other states of the Union.

In their conscientious efforts to adhere to the elementary principles of res judicata and to avoid the injustices that are possible by invoking the thesis of *Fall v. Eastin*,[5] many state courts have willingly employed an ingenious escape by employing an estoppel principle, whereby one who seeks rights in land in a foreign court, and loses, is deemed to be estopped from relitigating his claim at the situs[6], (a procedure, it is to be noted, which negates the illusion that equity cannot create rights in foreign land).

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[4] Currie, Full Faith and Credit to Foreign Land Decrees, 21 U. of Chi. L. Rev. 620, 631 (1954). (Counsel gratefully acknowledges a great debt to Professor Currie for the instructive insight provided by this superb article.)

[5] 215 U.S. 1 (1909).

[6] Norton v. House of Mercy, 101 Fed. 382 (C.A. 5th, 1900); MacDonald v. Dexter, 85 N.E. 209, 234 Ill. 517 (1908); Niles v. Lee, 135 N.W. 274, 169 Mich. 474 (1912); Roller v. Murray, 76 S.E. 172, 71 W. Va. 461 (1912); Hall v. Jones, 54 S.W. 2d 835 (Tex. Civ. App., 1932).

Other courts, disinterested in semantic loopholes, have in recent years simply and wisely given foreign land decrees the full effect of res judicata[9], by open or tacit reliance on the full faith and credit clause, which is encouraging evidence that the states themselves are becoming increasingly aware of the need for full confidence in and reliance on the judgments of all other states.

It is respectfully submitted to this court that (1) the basic weakness of the rule of *Fall v. Eastin*, (2) the failure of independent considerations to justify that rule, (3) the acute and growing dissatisfaction of the states whose courts feel bound by that rule, and (4) the crucial value of the res judicata principles, which cannot develop normally while deterred by that rule, are all imperative elements of the great need for a new principle of law to be established. The writ of certiorari is requested of this court that it may grant the privilege of review to the question of foreign land decrees and the respect to be afforded them under the constitutional clause of full faith and credit.

II.

By Judgments In Which The Non-recognition Of Full Faith And Credit Was Implicit And Patently Necessary, The Courts Of Arizona Have Directly Refused To Afford Petitioner The Protection Of The Federal Constitution.

The Supreme Court of Arizona, the highest court of that State, has refused to the Intervenors a writ of prohibition in which they

[9] Burnley v. Stevenson, 24 Ohio St. 474, 16 Am. Rep. 621 (1873); Dunlap v. Byers, 67 N.W. 1067, 110 Mich. 109 (1896); Mallette v. Scheerer, 160 N.W. 182, 164 Wis. 415 (1919); Matson v. Matson, 173 N.W. 127, 186 Iowa 607 (1919); Rozan v. Rozan, 317 P.2d 11 (Cal. App., 1957); Valley Nat. Bank of Phoenix v. Siebrand, 243 P.2d 771, 74 Ariz. 54 (1952). (The Arizona case so held, statedly, because no policy considerations of the forum were at stake in this instance.) McCune v. Goodwillie, 102 S.W. 997, 204 Mo. 306 (1907); Greer v. Greer, 189 S.W. 2d 104 (Tex. Civ. App., 1945). Simmons v. Superior Court, 214 P.2d 844, 64 C.A. 455 (1950); Barber v. Barber, 331 P.2d 628 (Cal. App., 1958); Zentsis v. Zentis, 158 N.W. 284, 163 Wis. 342 (1916).

pleaded that the Idaho judgment be held to be res judicata, of all issues litigated therein, in the proceedings incident to the separate maintenance action in Arizona, which pended in the trial court below. The Intervenors had correctly presented the Idaho judgment in the trial court below, and Mrs. Porter, herself, asked that the judgment be held to be res judicata insofar as it awarded benefits to her, despite which facts the trial court had refused to allow the judgment to be entered into evidence on trial of the case. In the Supreme Court, the Intervenors again pleaded the Idaho judgment and a duly authenticated copy was incorporated into their petition. After a hearing at which the merits, as well as procedure, were argued, the Arizona Supreme Court denied the writ.

Petitioner's own application for a writ of certiorari, immediately thereafter, pleaded the sole issue of full faith and credit, correctly incorporated the Idaho judgment into the Petition, and was not assailable on state procedural grounds, for certiorari was the only remedy available to him. No state procedural or substantive grounds were raised or considered.

Again the plea of full faith and credit was denied, the Court repeating its earlier refusal by stating that it was fully advised in the premises presented and did, therefore, deny the writ.

It was the contention of Petitioner therein that the Superior Court was without jurisdiction to entertain further proceedings concerning the hotel property, by reason of the Idaho divorce judgment, wherein the jurisdiction of the Arizona court had been litigated and found imperfect, and that if full faith and credit were *granted to the Idaho decree in toto, the issue of jurisdiction, itself,* became res judicata, and precluded the Superior Court from exercising jurisdiction which continued to be imperfect. In support of that contention Petitioner pleaded the federal Constitutional clauses of full faith and credit, due process and equal protection.

The only issue before the Arizona Supreme Court, then, on Petitioner's application for a writ of certiorari, was whether full faith and credit demanded that the trial court below concede it was

without jurisdiction by reason of the res judicata effect of the Idaho judgment, when the Idaho court had litigated and determined that issue.

As has been stated countless times by the Arizona Supreme Court, and as is stated specifically in *Welker v. Stevens*, 311 P. 2d 832, 834, 82 Ariz. 233 (1957), regarding certiorari:

> "Its sole function is to determine whether the inferior tribunal acted either without or in excess of its jurisdiction."

The Arizona Supreme Court, by its denial of the writ of certiorari, and being fully advised in the premises, as it stated, effectively denied the force of full faith and credit under the federal Constitution, for the decree of denial could not have been issued unless the court had determined that the inferior court *did* have jurisdiction, and that full faith and credit did *not* result in the Idaho decree being res judicata on the issue of jurisdiction and precluding the trial court from exercise of jurisdiction.

Insofar as the Intervenors' petition in the Arizona Supreme Court is concerned, the federal constitutional clauses, *per se*, were not cited, but the plea of res judicata clearly involved the acceptance of the Idaho decree by full faith and credit[1]; and Petitioner's own application expressly set up and claimed under the federal Constitution. In that regard, this Court has said:

> "As a general rule, it is true that for the purposes of review by this court's rights under the full faith and credit clause, § 1, article 4 of the Constitution, come within that class which are required to be expressly set up and claimed in the court below. Let it be conceded, as we think it must be, where the record leaves no doubt that rights under the full faith and credit clause were essentially involved and were necessarily passed upon, there would be jurisdiction to review even although such rights had not been expressly asserted below (see Tilt v. Kelsey [N. Y. 1907] 207 U. S. 43, 51 52 L. Ed. 95, 99, 28 S. Ct. 1); the right to review under such condition being in effect but a result of the elementary rule that it is irrelevant to inquire how and when a federal question was

[1] Riley v. New York Trust Co., 315 U.S. 343 (1942).

raised in a court below when it appears that such question was actually considered and decided." Manhattan Life Ins. Co. v. Cohen, Tex. 1914, 34 S. Ct. 874, 234 U. S. 123, 58 L. Ed. 1245.

This court has also held, in cases whose citations fill nearly a full page of *United States Code Annotated*, that this court may accept jurisdiction on writ of error to the highest court of a state in which a decision could be had, in circumstances where,

> " . . . it must appear affirmatively not only that a decision by the highest court of the state having jurisdiction but that its decision was necessary to the determination of the cause, that it was actually decided, *or that the judgment as rendered could not have been given without deciding it* . . . "

(*Williams v. Oliver*, Md. 1851, 53 U. S. 111, 12 How. 111, 13 L. Ed. 915.) That this is a true test of this court's jurisdiction is too well known to this court to necessitate the citing of the dozens of cases supporting the proposition.

The highest court of Arizona, it is respectfully submitted, by its denials of writs of prohibition and certiorari to parties who were attempting to invoke full faith and credit to the same Idaho judgment, has twice denied a right set up and claimed under the Constitution, by decisions on the federal question which were necessary to determination of the causes pleaded, and that could not have been given unless such federal questions were decided.

III.

Petitioner Is Absolutely Precluded From Any Other Remedy In The Courts Of Arizona And Is Thereby Forced Into A Legal Limbo Of Severe And Demonstrable Hardship.

That no relief whatsoever is available to Petitioner in the courts of Arizona is an unassailable argument.

The original trial court judgment for Mrs. Porter, in the separate maintenance action, in which Petitioner was not personally served and did not appear, was taken in default of him by the

Maricopa Superior Court of Arizona in May, 1959. In that same month the divorce action at the domicile, Idaho, was instituted by Petitioner, in which suit all matters pertinent to the separate maintenance judgment, as well as the divorce, were pleaded by Mrs. Porter, appearing personally and by counsel, for consideration and adjudication in the Idaho court, which obviously precluded Petitioner from trying to set aside the default judgment of Arizona and adjudicating the identical issues then being heard in Idaho.

By the time the Idaho divorce judgment was granted Mrs. Porter by her counterclaim, and all matters of the prior separate maintenance judgment adjudicated by the Idaho court, there was neither reason for Petitioner to believe it necessary to take further action in Arizona on the default judgment, nor was there legal theory to support any such contemplation, since the Idaho court had held the judgment void insofar as it affected incidents of the divorce settlement, had reimbursed Mrs. Porter for the support of herself and children during the separation period by terms of a court order, and had enjoined her from pursuing litigation in Arizona.

Furthermore, Petitioner was reluctant to enter an appearance in the Arizona trial court. That court had never had jurisdiction of Petitioner's person, and such fact had been litigated and determined by the court of his domicile, Idaho, on evidence and argument submitted by Mrs. Porter and counsel, and by Petitioner and counsel. Belatedly appearing in the trial court of Arizona, even to contest the court's jurisdiction through an attempt to establish the Arizona judgment defensively, presented an incalculable risk to Petitioner that considerably more complex litigation, than he then thought necessary, would arise. If it is the rule[1] that Petitioner's appearance to contest jurisdiction would be held an appearance for all purposes, and the Arizona court refused to heed the Idaho decree and litigated and determined its jurisdiction had always existed, or was now "cured" retroactively by virtue of the late appearance, an appeal to this court was definitely forseeable, a complication and

[1] Restatement, Conflict of Laws, §451, pp. 540-541.

extension of litigation Petitioner devoutly hoped to avoid. It is submitted, with considerable restraint, that the record is ample evidence that ascertainable prejudice has existed in the courts of Arizona against Petitioner and Intervenors, and that Petitioner was justified in the pessimistic anticipation that the issue of jurisdiction would be insistently relitigated and that the Idaho decree would not be honored by Respondent, except as the decree benefitted Mrs. Porter, despite the fact it was a decree of the domicile from a court in which Mrs. Porter voluntarily appeared, and despite the fact Arizona has given full faith and credit even to foreign land decrees prior to this case.[2]

That by the subsequent action of the Intervenors in the Arizona trial court, Petitioner ultimately found himself in a situation almost as complicated, before he had time to determine how to institute properly a suit to establish the divorce judgment of Idaho in Arizona, was not a forseeable circumstance, unfortunately.

After the Idaho divorce judgment of December, 1961, the separate maintenance proceedings in Arizona pended only as between Mrs. Porter, as defendant in intervention, and the Intervenors, as plaintiffs in intervention, despite the critical interest of Petitioner, himself, in the Intervenors' attempted establishment of the Idaho judgment. The judgment of the trial court in those proceedings issued in January, 1961, and was directed solely to Intervenors, in favor of Mrs. Porter.

By Arizona case law, reiterated as recently as 1961 in *Horne v. Superior Court*, 361 P. 2d 547, 89 Ariz. 289,

> "No appeal can be taken from default judgment of the Superior Court until defaulting party has first moved to set aside the default judgment. 16 A. R. S. Rules of Civil Procedure, Rule 60(c)."

Under the rule cited by the court, however, Petitioner was precluded from moving to set aside the default judgment against him after the lapse of one year from the date of the judgment taken in

[2] Valley Nat. Bank of Phoenix v. Siebrand, 243 P.2d 771, 74 Ariz. 54 (1952).

default of him in May of 1959. The rule of 60(c) of *Arizona Rules of Civil Procedure* is set forth as follows:

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an action to relieve a part from a judgment, order, or proceeding, or to set aside within one year a judgment obtained against a defendant not actually personally notified."

Therefore, no appeal could be taken by Petitioner from the judgment of the Superior Court of Arizona, after May of 1960, since he needs must have moved to set aside the judgment within the year between May of 1959 and May of 1960, and it was not possible to anticipate the necessity of such action prior to May of 1961 when Mrs. Porter filed her Answer and Counterclaim to the Intervenors' Supplementary Complaint and it became apparent Mrs. Porter intended to deny the efficacy of the deeds and release of judgment which she had executed, and to deny the validity of the Idaho divorce decree insofar as it affected the Arizona Hotel property.

By the same token, that of Petitioner's status as a defaulting Defendant, it is impossible for Petitioner to appeal from the Superior Court judgment directed to the Intervenors and Mrs. Porter, but even if such right existed, it would have only technical value, since Petitioner's only possible plea is to establish the Idaho judgment by virtue of full faith and credit, and both the Superior and Supreme Courts of Arizona have made eminently clear that they will give full faith and credit only to such parts of the decree which benefit Mrs. Porter, but will not honor the portions of the decree which adjudicated the matter of Arizona's imperfect jurisdiction in the prior separate maintenance suit and which ordered

the conveyances executed by Mrs. Porter, even though the deeds were actually executed and in evidence in the trial court.

After the Superior Court judgment against Intervenors, which issued in January of 1961, Petitioner then sought the only remedy available to him in Arizona, a writ of certiorari from the Supreme Court, the highest court of Arizona, asking that the trial court be required to give full faith and credit to the Idaho divorce judgment, and expressly pleading the appropriate constitutional clauses. The denial of the writ was depressingly predictable, in view of the Supreme Court's immediately-previous refusal of the Intervenors' application for a writ of prohibition, by which they, too, had sought to secure full faith and credit to the Idaho judgment, but Petitioner, being precluded from right of appeal, had no recourse but to apply for the only extraordinary writ available to him after entry of judgment in the Superior Court below.

Added to Petitioner's injury by lack of remedy in Arizona, is the extreme hardship of Petitioner's circumstances as they pertain both to his financial condition and his inescapable harassment from added lawsuits filed by Mrs. Porter. It will be noted from the Idaho decree of divorce that Mrs. Porter was granted alimony and support totalling $1,400.00 per month, and was granted all the property belonging to the community (with one exception), including realty and a home valued at One Hundred Twenty-five Thousand Dollars ($125,000.00), Petitioner's insurance, valued at One Hunred Thousand Dollars ($100,000.00), all stock of the community, automobile, personal effects, etc. Petitioner was awarded his separate property of one automobile and personal effects, and the one other asset of the community, the interest in the partnership of the hotel property in Arizona. That single asset of Petitioner has now been the subject of litigation for nearly four (4) years, during which time it has yielded no income to Petitioner, but has been subject to charges for Mrs. Porter's support, at the behest of the Arizona courts in recent litigation. Petitioner is, therefore, almost completely without funds to defend himself in the endless litigation in progress, and, to make matters all but unendurable,

has been made Defendant to charges of contempt brought by Mrs. Porter against him in Idaho, of which Petitioner was found innocent, and has since been made Defendant in a third suit, in the same Maricopa Superior Court of Arizona (Cause No. 132632), being prosecuted against him by Mrs. Porter, in which she again seeks to litigate matters of both the Arizona and Idaho judgments, that are identical to matters already being litigated in Cause No. 55179. As incident to Cause No. 132632, Petitioner was jailed on the strength of a ne exeat writ secured by Mrs. Porter, and forced to post bond in the amount of Ten Thousand Dollars ($10,000.00).

As was pointed out by the Judge of the Idaho court, in the findings in the contempt proceedings, Mrs. Porter knows that the Arizona Hotel property is normally Petitioner's main source of income, and she has defied the Idaho court's injunction by militantly prosecuting Petitioner in every way possible to defeat the divorce court's award of that one asset to Petitioner.

Petitioner's position is simply stated: He is without remedy in the courts of Arizona, he is without property or money by reason of the action of Mrs. Porter and the Arizona courts, and he is without protection of any kind from the courts of Arizona insofar as the harassing litigation by Mrs. Porter is pursued, for her own position has been inexplicably supported by the Arizona courts at every turn.

IV.

The Decision Of The Arizona Supreme Court To Deny Petitioner's Constitutional Claims Is Effectually Irrevocable.

Undeniably, the proceedings in this case are not at an end in Arizona. The Intervenors in the original suit of separate maintenance are entitled to take an appeal to the trial court judgment of January 24, 1962, which judgment directed a verdict for Defendant in Intervention, Mrs. Porter (who was Plaintiff in the

main cause of action as against the Intervenors. The Intervenors have filed notice of their intent to perfect an appeal of this independent judgment, and by that appeal they will again attempt to secure full faith and credit to the Idaho judgment of divorce by the Arizona courts, the precise objective sought by Petitioner's plea now before this court.

Notwithstanding these facts, it is the contention of counsel that the judgment here presented for review is a final judgment within the meaning and the spirit of 28 U. S. C. § 1257 as that statute has been interpreted in the past.

1. The federal question has been properly presented to the highest court of Arizona.

Petitioner's application to the Supreme Court of Arizona for a writ of certiorari formally cited the federal law on which he based his claim of right, i.e. Article 4, Sections 1 and 2, and Amendment XIV, Section 1, of the U. S. Constitution, and his contention therein, as to the incompetent jurisdiction being exercised in the trial court below, relied not only substantially, but wholly, on the dictates of those clauses. The sole argument of Petitioner before the Arizona appellate court was composed of his objection to that jurisdiction, by reason of the Idaho judgment which decreed that the Idaho court had litigated and determined that the Arizona trial court did not have jurisdiction in the separate maintenance action, and his claim that full faith and credit required Arizona to take cognizance of that finding and of the orders of conveyance, that the guarantee of the privileges and immunities clause required that Petitioner be granted his rights under the Idaho judgment, and that the due process clause insured him against having such privilege and or immunity abridged by the State of Arizona, or from having his property taken without due process of law, or from being denied the right of equal protection. Petitioner neither presented nor contended any other claim except those embodied in the federal law cited, he did not plead any state grounds to support his claim, and no state grounds were ever raised or argued before the Arizona Supreme Court.

Furthermore, the Arizona Supreme Court had already been faced with the federal question presented by the same Idaho judgment in the trial court, when it denied the application of the Intervenors for a writ of prohibition, in proceedings that had occurred less than a month previously. In that petition, the Intervenors had pleaded that the principles of res judicata demanded that the Arizona trial court respect the determinations of the Idaho court, as reflected by its properly introduced judgment, and that if such respect were accorded, the jurisdiction of the trial court could not be sustained. The trial court record will show that Intervenors specifically asked that the trial court resolve the federal question of full faith and credit, although the Intervenors did not formally plead the constitutional clauses relied on in the Arizona appellate court. This court has held, however, that the plea of res judicata, in connection with the judgment of a foreign state, will be deemed to raise the federal question (*Riley v. New York Trust Co.*, 1942, 315 U. S. 282), and it is respectfully submitted by counsel that examination of the petition of the Intervenors allows of no other interpretation than that they sought full faith and credit to the Idaho judgment.

2. The wrongful determination of the federal question of full faith and credit was irrefutably necessary to the Arizona Supreme Court's denial of the writ of certiorari sought by Petitioner.

This court has held, on innumerable occasions, that the judgment of the highest court of the state must indicate, for purposes of finality, that the federal question was considered and determined, or that the judgment, as rendered, was one to which a determination of the federal question was clearly necessary. (*Hammerstein v. Superior Court of California*, 1951, 341 U. S. 491.) The court has also held that if no independent state grounds support the decree of the court below, it will be presumed that the state court based its decision on the federal grounds (*Williams v. Kaiser*, 1945, 323 U. S. 471; *National Ass'n. for Advancement of Colored People v. State of Ala.*, ex rel. Patterson, 1958, 357 U. S. 449.),

and further, the denial or granting of a writ has been deemed a final judgment, for purposes of this court's jurisdiction, in instances where the state court's decree has the obvious effect of denying a right claimed under federal law, even though the decree issued without opinion. (*Madruga v. Superior Court of Calif.*, 1953, 346 U. S. 556, *Rescue Army v. Municipal Court of City of Los Angeles*, 1947, 331 U. S. 549; *Michigan Central Co. v. Mix*, 1929, 278 U. S. 492).

In the present instance the denial of Petitioner's application for a writ could not have issued unless the federal claim were denied, for had the Arizona appellate court sustained Petitioner's only grounds of defense, the decree must necessarily have held the jurisdiction of the lower court to be incompetent, and the appellate court could not have allowed the trial court judgment to stand. The appellate court had no questions of state law to consider. Petitioner's right to apply for the writ of certiorari was unquestioned in view of his lack of right to appeal and in view of the fact the writ of certiorari was the only one available to him to test jurisdiction of the lower court, by Arizona procedure, as has been cited earlier, and in denying the writ, the Arizona Supreme Court was literally forced to decide whether or not full faith and credit were to be granted the Idaho judgment. It is again remarked by Petitioner that the Arizona court had already denied the effect of full faith and credit by its prior refusal of a writ to the Intervenors, which would seem to be clearly indicative of the appellate court's tacit opinion of the merits of the issue, particularly when the federal question was orally argued at considerable length in both hearings. It will be noted that both decrees of the Arizona Supreme Court state explicitly that the court was "fully advised in the premises."

In the *Rescue Army* case, supra, and in *Bandini Petroleum Co. v. Superior Court*, 1931, 284 U. S. 8, this court held that the result of a prohibition proceeding, which effectually tested a jurisdictional question to which the decision of a federal question was necessary, was a final judgment for this court's purposes, if the constitutional issues had been raised in clean cut and concrete

form; it is counsel's contention that in the case here at issue, the federal questions were clearly presented, in an effort to test the jurisdiction of the trial court of Arizona, and that the appellate decision by which that jurisdiction was sustained is a patent denial of the federal claim of Petitioner.

In *Pope v. Atlantic Coast Line R. Co.*, 1953, 345 U. S. 379, this court held that it was not bound to determine presence or absence of finality from a mere examination of the face of the judgment, since the jurisdictional statute does not preclude a review of federal questions which are ripe for adjudication when tested against the policy of such statute. If the policy of the statute is directed primarily to affording protection to rights validly claimed under federal law, when no other protection is available, it is earnestly submitted by counsel that the present case is worthy of this court's attention at this time. The Arizona courts have shown clearly, both at the trial and appellate levels, that they do not deem the Idaho divorce judgment one requiring full faith and credit by Arizona, despite the fact parts of its terms have been established as a basis for the judgment of Mrs. Porter in the trial court, and despite the academic right of appeal in the Intervenors, who have no substantive issue that can be offered in their defense on appeal except the issue of full faith and credit. By the same token, Petitioner is without any hope of protection from Arizona, both because he has no other remedy and because, in any event, he has no defense other than the sole one propounded under Article 4, Section 1, of the Constitution. Since the Arizona appellate court has decided this issue twice, in separate proceedings, and given adverse decisions on the federal question against Intervenors and Petitioner, such determinations will surely be reflected by the same court when they again face the question on Intervenors' appeal; the decision as to Petitioner will conceivably be held to be res judicata as to Intervenors, and most certainly the appellate court will be guided by the doctrine of stare decisis in their third determination of a question twice answered in progeedings to which identical persons

were originally parties, and whose interest is basically identical. (*Hoff v. City of Mesa*, 1959, 344 P.2d 1013, 86 Ariz. 259.)

3. There is nothing more to be decided by the courts of Arizona.

This court has granted certiorari when "there is nothing more to be decided," and the federal issue is the controlling question. (*Clark v. Willard*, 1934, 292 U. S. 112; *Pope v. Atlantic Coast Line R. Co.*, supra.) There is nothing more to be decided, substantively, in the case at issue, for the controlling federal question has been decided already and the determination conclusively precludes Petitioner from establishing the Idaho judgment in Arizona under the claim predicated on federal full faith and credit; and it is submitted that by the principles of res judicata and stare decisis the determination will not be altered in the future. In the meantime, Petitioner is forced into a position of untenable hardship by being forced to wait idly for at least two years (currently the minimal time in which an appeal is heard in the Arizona Supreme Court), awaiting a repetitive decision of purely formalistic value which Intervenors feel they cannot safely afford to by-pass lest they sacrifice the possibility of invoking this court's jurisdiction in the far future; Petitioner freely concedes that the actions of the Intervenors in the separate maintenance proceedings and the divorce proceedings have been necessary to them, that they might protect their own rights in the hotel property at issue, but it is counsel's strong belief that the exigencies of this somewhat unusual situation, whereby the single substantial asset awarded Petitioner by the Idaho divorce court may be withheld from him for a possible total of at least six years by reason of independent actions, in circumstances where the question of law governing all claims is a federal question to which the highest court of a state has twice responded, by definitive denial of the constitutional rights, present a unique set of complications deserving of this court's consideration.

Presumably, Petitioner could institute a new suit in the Arizona courts to establish the Idaho judgment, but such action could only add to the current multiplicity of suits instituted by Mrs. Porter; all

suits would continue to be governed by the issue now before this court, i.e. the full faith and credit to be afforded the Idaho decree; and the judgments against the Intervenors in the proceedings auxiliary to the separate maintenance action, or against Petitioner, would again control a new suit by principles of stare decisis or res judicata, it is believed, despite the fact the judgment against Intervenors did not directly act against Petitioner.

The frustrations and uncertainty of this unconscionable predicament would appear to be conspicuous evidence of the basic bewilderment of courts faced with cases involving land and full faith and credit. The problems at issue, in all their extended confusion and complexity, are ones urgently requiring that the clarifying aid of this court direct their ultimate solutions.

CONCLUSION

This petition presents a federal question of preeminent importance in terms of constitutional principle; in terms of the natural development of established principles of res judicata, the question is equally vital; to petitioner the question is crucial. The substantiality of this inquiry is so definite, the complications of litigation are so unique, and the effect of the solution will be of such sweeping scope, that the problems presented are worthy of oral argument before this court, and of plenary consideration on the merits. Petitioner requests of this court the privilege of such a review.

Respectfully submitted,

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